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DEPARTMENT OF THE TREASURY
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR DISTRICT COUNSEL

FROM: ASSISTANT CHIEF COUNSEL (FIELD SERVICE)
CC:DOM:FS

SUBJECT: Revocability of Election of Depreciation Methods

This Field Service Advice responds to your memorandum dated February 9, 2000. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

Taxpayer	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=

ISSUE:

Whether Taxpayer made an irrevocable election under section 168 to use the straight-line or 150-percent declining balance method of depreciation rather than the 200-percent declining balance method of depreciation for 5-year property placed in service in Years 1 through 6.

CONCLUSIONS:

Taxpayer made an irrevocable election under section 168 to use the straight-line method of depreciation for 5-year property placed in service in Years 2 and 4, since

Taxpayer clearly indicated its choice of the allowable straight-line method for all its 5-year property on its Form 4562. Taxpayer may use the 200-percent declining balance method of depreciation for 5-year property placed in service in Years 3, 5, and 6, since Taxpayer clearly indicated its choice of the allowable 200-percent declining balance method for all of its 5-year property on its Form 4562. Taxpayer may also use the 200-percent declining balance method for 5-year property placed in service in Year 1 under Rev. Rul. 72-491, 1972-2 C.B. 104, which holds that where the Service disallows the use of any improper depreciation method for the first taxable year of attempted use, the taxpayer may adopt any depreciation method that would have been permissible had it been initially adopted.

FACTS

Taxpayer is in the business of leasing equipment. For book and tax purposes, Taxpayer accounts for certain leases as sales type leases and other leases as operating leases. Taxpayer retains title under the operating leases and the property reverts to it on termination of the leases.

From Year 1 through 3, Taxpayer was an S Corporation, reporting income from the operating leases as rental income and claiming depreciation deductions on Forms 1120S. For Years 4 through 6, Taxpayer was a C Corporation, reporting income from the operating leases and claiming depreciation deductions on Forms 1120. For each of the years 1 through 6, Taxpayer included Forms 4562, Depreciation and Amortization (Including Information on Listed Property) with its federal income tax returns, but did not include itemized depreciation schedules at the time when the returns were filed.

Taxpayer's Form 4562 for Year 1 reported a certain number of assets placed in service during Year 1, in Part V, Listed Property, on the line for Property used more than 50 percent in a qualified business use. All these assets were listed with a three year recovery period and a half year convention. The 200-percent declining balance method of depreciation was listed for most of the assets and the straight-line method was listed for the others.

Taxpayer's Form 4562 for Year 2 reported a certain dollar amount total of unidentified properties placed in service during Year 2 at Part II, MACRS Depreciation For Assets Placed in Service Only During Your Year 2 Tax Year, under the classification of 3-year property, with a three year recovery period, half year convention, and straight-line method of depreciation. Taxpayer's Form 4562 for Year 2 also reported a certain other dollar amount total of unidentified properties placed in service during Year 2 at Part II under the classification of 5-year property, with a five year recovery period, half year convention, and straight-line method of depreciation.

Taxpayer's Form 4562 for Year 3 reported a certain dollar amount total of unidentified properties placed in service during Year 3 at Part II, MACRS Depreciation For Assets Placed in Service Only During Your Year 3 Tax Year, under the classification of 3-year property, with a 2.9 year recovery period, half year convention, and 150-percent declining balance method of depreciation. Taxpayer's Form 4562 for Year 3 also reported a certain other dollar amount total of unidentified properties placed in service during Year 3 at Part II under the classification of 5-year property, with a five year recovery period, mid-quarter convention, and 200-percent declining balance method of depreciation.

Taxpayer's Form 4562 for Year 4 reported all of its assets placed in service during Year 4 at Part II, MACRS Depreciation For Assets Placed in Service Only During Your Year 4 Tax Year, under the classification of 5-year property, with a five year recovery period, half year convention, and straight-line method of depreciation.

Taxpayer's Form 4562 for Year 5 reported a certain dollar amount total of unidentified properties placed in service during Year 5 at Part II, MACRS Depreciation For Assets Placed in Service Only During Your Year 5 Tax Year, under the classification of 3-year property with a 2.8 year recovery period, half year convention, and 200-percent declining balance method of depreciation. Taxpayer's Form 4562 for Year 5 also reported a certain other dollar amount total of unidentified properties placed in service during Year 5 at Part II under the classification of 5-year property, with a five year recovery period, half year convention, and 200-percent declining balance method of depreciation.

Taxpayer's Form 4562 for Year 6 reported a certain dollar amount total of unidentified properties placed in service during Year 6 at Part II, MACRS Depreciation For Assets Placed in Service Only During Your Year 6 Tax Year, under the classification of 5-year property, with a five year recovery period, half year convention, and 200-percent declining balance method of depreciation. Taxpayer's Form 4562 for Year 6 also reported a certain other dollar amount total of unidentified properties placed in service during Year 6 at Part II under the classification of 7-year property, with a seven year recovery period, half year convention, and 200-percent declining balance method of depreciation. Further, Taxpayer's Form 4562 for Year 6 reported an additional dollar amount total of properties at Part III, Other Depreciation, on the line for ACRS and other depreciation. Taxpayer produced schedules indicating that the properties had been placed in service during Year 6, with recovery periods ranging from 1.8 to seven years and straight-line method of depreciation.

For none of the Years 1 through 6 did Taxpayer make an entry on its Forms 4562, Part III, on the line for Property subject to the section 168(f)(1) election. For Years 1 through 6, all the entries at Part II, dealing with MACRS depreciation for assets placed in service during the current year, were made in the portion of Part II

concerning the General Depreciation System rather than the portion dealing with the Alternative Depreciation System.

Taxpayer maintains that it uses a production of income methodology and that its recovery periods approximate the terms of the underlying leases. None of the property leased by Taxpayer is qualified rent-to-own property. Much of the leased property is manufacturing and technological equipment.

Taxpayer is prepared to concede that a MACRS recovery period of 5 years is appropriate for all the assets for which a shorter period was used. However, Taxpayer proposes that it be allowed to use the 200-percent declining balance method of depreciation for all assets placed in service during Year 1, Year 4, and Year 6.

LAW AND ANALYSIS

Section 167(a) allows as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business or held for the production of income. Section 168(a) states that except as otherwise provided, the depreciation deduction of section 167(a) for any tangible property shall be determined by using the applicable depreciation method, the applicable recovery period, and the applicable convention.

Section 168(b) prescribes depreciation methods for purposes of the general depreciation system of section 168(a). Section 168(b)(1) states that except as provided in section 168(b)(2) and section 168(b)(3), the applicable method is the 200-percent declining balance method switching to the straight-line method for the first taxable year for which using the straight-line method with respect to the adjusted basis as of the beginning of the year will yield a larger amount. Section 168(b)(2)(A) and (B) provide that the 150-percent declining balance method applies to certain specified types of property not here relevant. Section 168(b)(2)(C) provides that the 150-percent declining balance method applies to any property not described in section 168(b)(3) with respect to which the taxpayer makes an election under section 168(b)(5). Section 168(b)(3)(A), (B), (C), (E), and (F) provide that the straight-line method applies to certain types of property not here relevant. Section 168(b)(3)(D) provides that the straight-line method applies to property with respect to which the taxpayer makes an election under section 168(b)(5).

Section 168(b)(5) provides that an election under section 168(b)(2)(C) or (3)(D) may be made with respect to one or more classes of property for any taxable year and once made with respect to any class shall apply to all property in such class placed in service during such taxable year. Such an election, once made, shall be irrevocable. Section 168(e)(1), dealing with classification of property, provides that property will be treated as "3-year property" if it has a class life of four or less years and as "5-year property" if it has a class life of more than four or less than ten

years.¹ Section 168(e)(3)(A) provides that the term “3-year property” includes certain horses and any qualified rent-to-own property. Section 168(e)(3)(B) provides that the term “5-year property” includes, among other things, any semi-conductor manufacturing equipment and any qualified technological equipment as defined in section 168(i)(2).

Section 168(f) provides that section 168 does not apply to any property if the taxpayer elects to exclude such property from the application of section 168, and for the first taxable year for which a depreciation deduction would be allowable with respect to such property in the hands of the taxpayer, the property is properly depreciable under the unit-of-production method or any method of depreciation not expressed in a term of years (other than the retirement-replacement-betterment method or similar method).

Temp. Treas. Reg. § 301.9100-7T(a)(1) provides rules for the time and manner of making elections pursuant to sections 168(b)(5) and (f)(1). Treas. Reg. § 301.9100-7T(a)(2) provides that the time for making such elections is the due date, taking extensions into account, of the tax return for the first taxable year for which election is to be effective. Treas. Reg. § 301.9100-7T(a)(3) states that unless otherwise provided the elections of paragraph (a)(1) of Treas. Reg. § 301.9100-7T shall be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. Except as provided in the return or its instructions, the statement shall identify the election, indicate the section of the Code (or of the Tax Reform Act of 1986 for uncodified provisions) under which the election is made, and specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply.

Pacific National Co. v. Welch, 304 U.S. 191 (1938), is often considered the bedrock case dealing with the doctrine of elections. There, a taxpayer could have used the installment method to report sales of property, but reported the income using the deferred payment method on his return. After the time for filing the original return had expired, the taxpayer filed an amended return seeking use of the installment method. The taxpayer conceded that both methods were allowable. The Supreme Court held that the taxpayer had made a binding election and reasoned that change from one method to another would require recomputation and readjustment of tax liability for subsequent years and impose burdensome uncertainties.

¹It should be noted that the term “class” as used in section 168(b)(5), concerning elections with respect to any class of property, refers to the categories of property in the left hand column of section 168(e)(1), where it is provided that property shall be treated as 3-, 5-, 7-, 10-, 15-, or 20-year property, rather than to the “class life” categories in the right hand column of section 168(e)(1) or to the “asset classes” in Rev. Proc. 87-56, 1987-2 C.B. 674.

Riley Co. v. Commissioner, 311 U.S. 55 (1940), noted that allowing an untimely election would permit a taxpayer to use hindsight to shift from one allowable method of depletion to another in light of developments subsequent to its original choice. “Oversight, poor judgement, ignorance of the law, misunderstanding of the law, unawareness of the tax consequence of making an election, miscalculation, and unexpected subsequent events have all been held insufficient to mitigate the binding effect of elections made under a variety of provisions of the Code.” Estate of Stamos v. Commissioner, 55 T.C. 468, 474 (1970). However, purely mathematical errors in computation, as opposed to estimates and matters of judgement, may be corrected. Pacific Mutual Life Insurance Co. v. Commissioner, 48 T.C. 118 (1967), rev'd on another issue, 413 F 2d 55 (1969).

In Silver Queen Motel v. Commissioner, 55 T.C. 1101 (1971), acq., 1972-2 C.B. 3, the taxpayer elected to use the double-declining balance method of depreciation with respect to used motel properties during 1966, the first year of the taxpayer's existence, and 1967. However, the double-declining balance method was unavailable for used properties by virtue of former section 167(c). The taxpayer then sought to use the otherwise allowable 150-percent declining balance method. Respondent argued that having erroneously originally elected the double-declining balance method, the taxpayer was now required to use the straight-line method under Treas. Reg. § 1.167(b)-1(a), which provides that the straight-line method shall be used in all cases where the taxpayer has not adopted a different acceptable method. Because the Commissioner denied the erroneous double-declining balance method in the first year in which the property was subject to depreciation, the court allowed the taxpayer to correct its mistaken initial choice of an impermissible depreciation method by adopting any permissible depreciation method.

In Foley v. Commissioner, 56 T.C. 765 (1971), acq., 1972-2 C.B. 2, the taxpayer acquired 18 items of used property in 1964. The taxpayer elected the double-declining balance method of depreciation with respect to 16 of the items and the straight-line method with respect to the other two on his 1964 income tax return. Subsequently, the taxpayer's bookkeeper discovered that the double-declining balance method had erroneously been applied. Before the 1965 income tax return was filed, an amended return for 1964 was filed seeking to employ the 150-percent declining balance method with respect to all 18 items. The court followed Silver Queen Motel, supra, and, therefore, allowed the taxpayer to adopt for 1964 the 150-percent declining balance method for the 16 items for which the taxpayer initially elected an erroneous depreciation method. With respect to the 2 items for which the taxpayer initially used the straight-line method, the court decided adversely to the taxpayer because the straight-line method was an allowable depreciation method and a change from that method to another allowable depreciation method was a request for a change in method of accounting, which required the consent of the Commissioner.

Rev. Rul. 72-491, 1972-2 C.B. 104, revoked Rev. Ruls. 67-50, 1967-1 C.B. 60, and 67-338, 1967-2 C.B. 102. These rulings had held that when a taxpayer had incorrectly claimed depreciation under the sum-of-the-year-digits or double-declining balance methods for used property contrary to former section 167(c), the taxpayer could not later claim use of the 150-percent declining balance method, but must use the straight-line method, absent consent to change the taxpayer's method of accounting. These rulings were now revoked in light of Silver Queen Motel, *supra*, and Foley, *supra*.

Accordingly, Rev. Rul. 72-491 states that it is now the position of the Service that when a taxpayer has attempted to use an erroneous depreciation method: (1) if, as in Silver Queen Motel, the Service disallows the use of an improper depreciation method for the first taxable year for which the taxpayer attempts to use the method, the taxpayer may adopt any depreciation method that would have been permissible had it been initially adopted; and (2) if, as in Foley, the taxpayer filed his first return using an improper depreciation method and, prior to the time the return for the succeeding taxable year is filed, filed an amended return using a proper depreciation method, the use of the proper depreciation method is permissible without obtaining the Commissioner's consent.

Rev. Rul. 74-154, 1974-1 C.B. 59, concerned a taxpayer who put a footnote on the depreciation schedule of his 1970 income tax return stating that current year additions of assets with a useful life of 25 years or less would be depreciated under the straight-line method and those with a life of over 25 years would be depreciated under a declining balance method. On audit, a depreciable asset with an estimated useful life of 20 years on the 1970 return was determined to have a useful life in excess of 25 years. The taxpayer then requested use of a declining balance method beginning with 1970. Rev. Rul. 74-154 holds that despite the footnote on the taxpayer's return, the taxpayer could not change the depreciation method without the consent of the Commissioner because the straight-line method adopted by the taxpayer was an allowable depreciation method.

Taxpayer in the present case is prepared to concede that five years is the proper recovery period for all property for which it claimed a recovery period of less than five years. Since section 168(c) provides that the applicable recovery period is five years in the case of 5-year property, this is tantamount to a concession that the property in issue is classified as "5-year property" under section 168(e). It also appears that none of the property in question falls within the types of property statutorily classified as "3-year property" under section 168(e)(3)(A).

The issue in this case is whether the taxpayer made an irrevocable election to use the straight-line or 150-percent declining balance method of depreciation for its assets placed in service during each of the years under consideration, precluding use of the 200-percent declining balance method now sought on audit. Resolution

of this question is to be done on a yearly basis, depending upon the particular facts of each year.

For Year 1, Taxpayer's Form 4562 reported all the assets placed in service in Year 1 as listed property in Part V. The 200-percent declining balance method of depreciation was indicated for most of these assets with "200 DB" and the straight-line method was indicated for the others with "S/L" at column (g). A three year recovery period was indicated for all the assets and it is now agreed that all the property constitutes 5-year property.

The Instructions for Form 4562 for Year 1, in the portion concerning MACRS depreciation for assets placed in service only during the taxpayer's Year 1, state that the applicable depreciation method for 5-year property is the 200-percent declining balance method, switching to the straight-line method in the first year that maximizes the depreciation allowance. It is stated that the taxpayer may make an irrevocable election to use the 150-percent declining balance method for one or more classes of property, and that the taxpayer may also make an irrevocable election to use the straight-line method for all property within a classification that is placed in service during the tax year. The taxpayer is to enter "200 DB," "150 DB," or "S/L" in column (f) of Part II of the Form 4562, the part of the return dealing with MACRS property except listed property. With regard to Part V of the Form 4562, the part dealing with listed property, the instructions for Form 4562 do not contain a specific discussion of the election process, but state that the taxpayer is to write "200 DB," "150 DB," or "S/L" for the depreciation method in column (g) of Part V.

Thus, Taxpayer used the 200-percent declining balance method for most of the now conceded 5-year property in question placed in service during Year 1 and the straight-line method for the others. Section 168(b)(1) provides that the applicable method is the 200-percent declining balance method except as provided in section 168(b)(2), i.e., the 150-percent declining balance method, and section 168(b)(3), i.e., the straight-line method. Section 168(b)(5) provides that an election under section 168(b)(2)(C) or (3)(D) once made with respect to any class shall apply to all property in such class placed in service during such taxable year and, once made, shall be irrevocable. Consequently, unless the property at issue is subject to section 168(g)(1)-(6), all 5-year property placed in service in the same taxable year must be depreciated under section 168 by using the same depreciation method.

Rev. Rul. 72-491, supra, states that if the Service disallows the use of an improper depreciation method for the first taxable year for which its use is attempted, the taxpayer may adopt any depreciation method which would have been permissible had it been initially adopted. The Service has disallowed Taxpayer's present method in the property's placed in service years and Taxpayer's use of different depreciation methods for its 5-year property placed in service in Year 1, none of which is subject to section 168(g)(1)-(6), is improper. Taxpayer now seeks the 200-percent declining balance method for all of its 5-year property, none of which is

subject to section 168(g)(1)-(6). Not only is this a depreciation method which would have been initially proper for 5-year property, the 200-percent declining balance method is the default method applicable for 5-year property if no election to use another depreciation method has been made under section 168. Accordingly, use of the 200-percent declining balance method for all of Taxpayer's 5-year property placed in service in Year 1 is now allowable.

For Year 2, Taxpayer's Form 4562 reported all of the assets placed in service during Year 2 in Part II, MACRS depreciation. Though some of those assets were reported incorrectly with a three year recovery period and some allowably with a five year recovery period, the straight-line method was indicated for all with "S/L" in Column (f). The Instructions for Form 4562 for Year 2 are substantially similar to those for Year 1.

Thus, Taxpayer clearly made an allowable irrevocable election of the straight-line method for all of the now concededly 5-year property placed in service during Year 2, and the requirement of section 168(b)(5) that the election apply to all the property in the class is satisfied. The election is valid. In Year 2, Taxpayer placed in service 5-year property other than the items in question. For these correctly classified 5-year property, Taxpayer clearly elected the straight-line method and consistently applied it to all such property. Although some of the now concededly 5-year property was incorrectly reported as 3-year property, Taxpayer used the straight-line method for them as it did for those items correctly classified as 5-year property. To allow Taxpayer the use of the 200-percent declining balance method in these circumstances would permit the use of hindsight in violation of the doctrine of binding election as elucidated by Pacific National Co., *supra*, and Riley Co., *supra*. Taxpayer is required to use the straight-line method for all of its 5-year property placed in service in Year 2, which it irrevocably elected.

For Year 3, Taxpayer's Form 4562 reported all of the assets placed in service during Year 3 in Part II, MACRS depreciation. Some of those assets were reported incorrectly as 3-year property with a 2.9 year recovery period and with "150DB" indicated in column (f). Other assets were reported allowably as 5-year property with a five year recovery period and with "200 DB" at column (f). The Instructions for Form 4562 for Year 3 are substantially similar to those for Year 1.

Thus, Taxpayer's entry of "200DB" on its Form 4562 for assets correctly classified as 5-year property and placed in service in Year 3 clearly indicates that Taxpayer used the 200-percent declining balance method for any 5-year property placed in service in Year 3. Because all 5-year property placed in service in the same taxable year must use the same depreciation method (unless section 168(g)(1)-(6) applies), Taxpayer must use the same depreciation method for all of its 5-year property placed in service in Year 3, including depreciable property reclassified as 5-year property. None of the now concededly 5-year property is subject to section 168(g)(1)-(6). Accordingly, Taxpayer's initial choice of the 200-percent declining

balance method for 5-year property placed in service in Year 3 also applies to the now concededly 5-year property placed in service in the same year.

For Year 4, Taxpayer's Form 4562 reported all of the assets placed in service during Year 4 in Part II, MACRS depreciation. All of these assets were reported correctly as 5-year property with a five year recovery period and with "S/L" in column (f). Consequently, the straight-line method was indicated for this 5-year property. The Instructions for Form 4562 for Year 4 are substantially similar to those for Year 1.

Thus, Taxpayer clearly made an allowable irrevocable election of the straight-line method for all of the 5-year property placed in service during Year 4, and the requirement of section 168(b)(5) that the election apply to all the property in the class is satisfied. The election is valid. In Year 4, Taxpayer placed in service 5-year property other than the items in question. For these correctly classified 5-year property, Taxpayer clearly elected the straight-line method and consistently applied it to all such property. To allow Taxpayer the use of the 200-percent declining balance method in these circumstances would permit the use of hindsight in violation of the doctrine of binding election as elucidated by Pacific National Co., *supra*, and Riley Co., *supra*. Taxpayer is required to use the straight-line method for all 5-year property placed in service in Year 4, which it irrevocably elected.

For Year 5, Taxpayer's Form 4562 reported all of the assets placed in service during Year 5 in Part II, MACRS depreciation. Though some of these were reported incorrectly as 3-year property with a 2.8 year recovery period and some allowably as 5-year property with a five year recovery period, the 200-percent declining balance method was indicated for all with "200 DB" in column (f). The Instructions for Form 4562 for Year 5 are substantially similar to those for Year 2.

Thus, Taxpayer's entry of "200DB" on its Form 4562 for assets correctly classified as 5-year property and placed in service in Year 5 clearly indicates that Taxpayer used the 200-percent declining balance method for any 5-year property placed in service in Year 5. Because all 5-year property placed in service in the same taxable year must use the same depreciation method (unless section 168(g)(1)-(6) applies), Taxpayer must use the same depreciation method for all of its 5-year property placed in service in Year 5, including depreciable property reclassified as 5-year property. None of the now concededly 5-year property is subject to section 168(g)(1)-(6). Accordingly, Taxpayer's initial choice of the 200-percent declining balance method for 5-year property placed in service in Year 5 also applies to the now concededly 5-year property placed in service in the same year.

For Year 6, Taxpayer's Form 4562 reported some of the assets placed in service during Year 6 in Part II, MACRS depreciation, in the section applicable to the General Depreciation System and some of the assets placed in service during Year 6 in Part III, Other Depreciation. With respect to the assets reported in Part II,

none of the assets were reported as 3-year property, some were reported as 5-year property with a five year recovery period, and some were reported as 7-year property with a seven year recovery period. The 200-percent declining balance method was indicated for the 5-year property (as it was for the 7-year property) with "200 DB" at column (f).

The assets placed in service during Year 6 which were reported in Part III were reported on the line for "ACRS and other depreciation," which contains a space only for a total amount. Upon audit, Taxpayer provided a schedule indicating that the items resulting in this amount had been placed in service during Year 6, with recovery periods ranging from 1.8 to seven years, and it is now agreed that the property was 5-year property. The straight-line method was indicated for each of these items by "S/L." The Instructions for Form 4562 for 1997 indicate that the line for "ACRS and other depreciation" was not the proper place for 3-, 5-, or 7-year property placed in service during Year 6.

Thus, Taxpayer's entry of "200DB" in Part II of its Form 4562 for assets correctly classified as 5-year property and placed in service in Year 6 clearly indicates that Taxpayer used the 200-percent declining balance method for any 5-year property placed in service in Year 6. Because all 5-year property placed in service in the same taxable year must use the same depreciation method (unless section 168(g)(1)-(6) applies), Taxpayer must use the same depreciation method for all 5-year property placed in service in Year 6, including depreciable property reclassified as 5-year property. None of the now concededly 5-year property is subject to section 168(g)(1)-(6). Accordingly, Taxpayer's initial choice of the 200-percent declining balance method for 5-year property placed in service in Year 6 also applies to the now concededly 5-year property placed in service in the same year.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

Only Years 2 and 4 remain in issue. For both these years, the straight-line method was indicated for all the now concededly 5-year property by the entry of "S/L" on the Forms 4562 at column (f) of Part II.

Treas. Reg. § 301.9100-7T(a)(3)(i) provides generally that the elections specified therein (including the section 168(b)(5) election of the straight-line method of depreciation) shall be made by attaching a statement to the return. No such statements were attached to Taxpayer's returns. It should therefore be made plain that Treas. Reg. § 301.9100-7T(a)(3)(i) further provides that "(e)xcept as otherwise provided in the return or in the instructions accompanying the return for the taxable year," the statement shall provide any information required by the relevant statutory provisions. The Instructions for Form 4562 for Years 2 and 4 provide that the taxpayer may make an irrevocable election to use the straight-line method for all property within a classification placed in service during the taxable year by entering

“S/L” in column (f) of Part II, which Taxpayer did. It is clear that the provision of a specific place for stating the election on the Form 4562 itself was to relieve the need for providing such information by a separate statement.

Otherwise, there do not appear to be any litigating hazards. Taxpayer’s plain election on its Forms 4562 for Years 2 and 4 of the statutorily irrevocable straight-line method for all of the property in the classification clearly constitutes a binding election under Pacific National Co. and its progeny.

Please call if you have any further questions.

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